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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/691,091	10/18/2000	Corey Young	MCP 208	3750

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EXAMINER

PHAN, TAM T

ART UNIT	PAPER NUMBER
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2142

DATE MAILED: 08/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/691,091

Applicant(s)

YOUNG ET AL.

Examiner

Tam (Jenny) Phan

Art Unit

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspond nce address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 October 1999 is/are: a) ☒ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Priority

1. This application claims benefit of the provisional application 60/167,551 (10/18/1999).
2. The effective filing date of the claimed invention is October 18, 1999.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 1 is generally narrative and indefinite, failing to conform with current U.S. practice. They are replete with grammatical and idiomatic errors. For instance "downloading the a non-sequential record". Such sentences made it difficult for the examiner to interpret the claimed invention.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 3, 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Van Ryzin et al. (U.S. Patent Number 6,446,080), hereinafter referred as Ryzin.

7. Regarding claim 1, Ryzin disclosed a method for reducing latency in sequential record browser, comprising the steps of: defining a sequential list of records (Figure 2, Figure 5 sign 30); selecting a record from the list for review (Figure 2, Figure 5 sign 80); downloading the selected, and records sequentially thereafter until interrupted (Figure 2, Figure 8 signs 86 and 88); interrupting the download by selecting a non-sequential record (column 3 lines 6-10); and downloading the non-sequential record and records sequentially thereafter until interrupted (column 3 lines 66-67 and column 4 lines 1-3).

8. Regarding claim 3, Ryzin disclosed said method is executed by a browser application (column 4 lines 57-64).

9. Regarding claim 4, Ryzin disclosed said method is executed by an audio/visual actuator device [browser plug-in or extension] (column 4 lines 61-67 and column 5 lines 1-4).

10. Claim 2 is rejected under 35 U.S.C. 102(e) as being anticipated by Katinsky et al. (U.S. Patent Number 6,452,609), hereinafter referred as Katinsky.

11. Regarding claim 2, Katinsky disclosed a method for prequeuing of files predicted to be desired by a user, through a telecommunication link, into a local cache, based on a list generated by a restrictive criteria, wherein the prequeuing system is responsive to any change in the sequence of user review, such that predicted latencies for sequential file review from any given starting point are optimized (column 2 lines 44-60).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ryzin as applied above in view of Schulhof et al. (U.S. Patent Number 5,557,541), hereinafter referred as Schulhof, and further in view of what would have been obvious to one of ordinary skill in the art at the time of the invention.

14. Regarding claim 5, Ryzin disclosed a method for reducing latency in sequential record browser, comprising the steps of: defining a sequential list of records (Figure 2, Figure 5 sign 30); selecting a record from the list for review (Figure 2, Figure 5 sign 80); downloading the selected, and records sequentially thereafter until interrupted (Figure 2, Figure 8 signs 86 and 88); interrupting the download by selecting a non-sequential record (column 3 lines 6-10); and downloading the non-sequential record and records sequentially thereafter until interrupted (column 3 lines 66-67 and column 4 lines 1-3). Ryzin did not disclose the step of cost accounting for downloading of each record. However, Schulhof disclosed a distribution system that enables a subscriber to select desired programs [download of each record] and to be charged for the service [cost accounting of downloading records] (column 6 lines 33-40). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention was made to employ the use of cost accounting to charge for downloading materials in order to

prevent copyright infringement should materials relate to multimedia, literature, etc. Billing the subscribers for each record of downloaded materials will prevent non-subscribers from abusing the network bandwidth.

15. Regarding claim 7, Schulhof disclosed the steps of accounting for downloaded record; and limiting said downloading based on predetermined parameter (column 6 lines 33-40, column 8 lines 4-14, and column 9 lines 30-35).

16. Since all the limitations of the claimed invention were disclosed by the combination of Ryzin and Schulhof, claims 5 and 7 are rejected.

17. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ryzin as applied above in view of Katinsky et al. (U.S. Patent Number 6,452,609), hereinafter referred as Katinsky and further in view of what would have been obvious to one of ordinary skill in the art at the time of the invention.

18. Regarding claim 6, Ryzin disclosed a method for reducing latency in sequential record browser, comprising the steps of: defining a sequential list of records (Figure 2, Figure 5 sign 30); selecting a record from the list for review (Figure 2, Figure 5 sign 80); downloading the selected, and records sequentially thereafter until interrupted (Figure 2, Figure 8 signs 86 and 88); interrupting the download by selecting a non-sequential record (column 3 lines 6-10); and downloading the non-sequential record and records sequentially thereafter until interrupted (column 3 lines 66-67 and column 4 lines 1-3). Ryzin did not disclose the steps of communicating through a network to a server hosting the records; presenting a list of records to a user; and receiving a selection of record

from the user. However, Katlinsky disclosed a method of reducing latency which comprised the steps of communicating through a network to a server hosting the records; presenting a list of records to a user; and receiving a selection of record from the user (column 10 lines 9-24). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention was made to employ said steps in order to allow the server to response more efficiently to user commands and requests. Such steps will allow the playlist to be updated, maintained, and stream seamlessly if the user decides to change their original request.

19. Since all the limitations of the claimed invention were disclosed by the combination of Ryzin and Katlinsky, claim 6 is rejected.

20. Claims 8-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katinsky as applied in view of Schulhof et al. (U.S. Patent Number 5,557,541), hereinafter referred as Schulhof, and further in view of what would have been obvious to one of ordinary skill in the art at the time of the invention.

21. Katinsky disclosed a method for prequeuing of files predicted to be desired by a user, through a telecommunication link, into a local cache, based on a list generated by a restrictive criteria, wherein the prequeuing system is responsive to any change in the sequence of user review, such that predicted latencies for sequential file review from any given starting point are optimized (column 2 lines 44-60).

22. Regarding claim 8, Katinsky did not disclose said method wherein predicted latencies are minimized. However, Schulhof disclosed an element wherein predicted

latencies are minimized by queuing the records in a fast hard disk drive (column 10 lines 53-61). Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention was made to employ a prequeuing system wherein the prequeuing system is responsive to any change in the sequence of user review, such that predicted latencies for sequential file review from any given starting point are minimized in order to provide user with seamless stream of digital content. Latencies in a multimedia digital content are usually unacceptable. Most users do not want to experience delay when they are trying to listen to music or to watch a video stream.

23. Regarding claim 9, Schulhof disclosed a method wherein the prequeuing is optimized based on both predicted latencies and a throughput of the telecommunication link (column 9 lines 10-18, column 10 lines 57-61).

24. Regarding claim 10, Schulhof disclosed a method wherein the prequeuing is optimized based on both predicted latencies and an apparent strategy for review of records by the user (column 10 lines 13-24).

25. Regarding claim 11, Schulhof disclosed a method wherein the prequeuing is optimized based on both predicted latencies and a cost of the record downloads (column 10 lines 13-24, lines 41-44).

26. Regarding claim 12, Schulhof disclosed a method wherein the prequeuing is optimized based on both predicted latencies and a cost of on-line time (column 9 lines 27-35, column 10 lines 11-24).

27. Regarding claim 13, Schulhof disclosed a method wherein the prequeuing is optimized based on both predicted latencies and a value of the user's time (column 2 lines 13-28, column 8 lines 4-13, and column 9 lines 57-60).

28. Regarding claim 14, Schulhof disclosed a method wherein the prequeuing is optimized based on both predicted latencies and a burden on the server (column 9 lines 54-60, column 11 lines 20-25).

29. Since all the limitations of the claimed invention were disclosed by the combination of Katlinsky and Schulhof, claims 8-14 are rejected.

30. Claims 1, 3-4, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (International Publication Number 00/59228), hereinafter referred as Smith and further in view of Katlinsky (U.S. Patent Number 6,452,609), hereinafter referred as Katinsky.

31. Regarding claim 1, Smith disclosed a method for reducing latency in sequential record browser, comprising the steps of: defining a sequential list of records (Abstract); selecting a record from the list for review (page 2 lines 6-10); downloading the selected, and records sequentially thereafter until interrupted (Page 2 lines 35 and page 3 lines 1-3). Smith did not disclose steps of interrupting the download by selecting a non-sequential record and downloading the non-sequential record and records sequentially thereafter until interrupted. However, Katlinsky disclosed steps of interrupting the download by selecting a non-sequential record and downloading the non-sequential record and records sequentially thereafter until interrupted (column 2 lines 45-60).

Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention was made to allow user to select a non-sequential record and continue the download from there in order to reduce bandwidth wastage. For instance, users select a list of records to download. While waiting for the play list, they want to skip the first few records. One would want to stop download these records and download only the records that the users just recently requested to speed up the download time and to reduce the network load.

32. Regarding claim 3, Katlinsky disclosed said method is executed by a browser application (column 4 lines 16-25).

33. Regarding claim 4, Katlinsky disclosed said method is executed by browser plug-in or extension (column 6 lines 1-7).

34. Regarding claim 6, Katlinsky disclosed a method of reducing latency which comprised the steps of communicating through a network to a server hosting the records; presenting a list of records to a user; and receiving a selection of record from the user (column 10 lines 9-24).

35. Since all the limitations of the claimed invention were disclosed by the combination of Smith and Katlinsky, claims 1, 3-4, and 6 are rejected.

Conclusion

36. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Stefik (U.S. Patent Number 5,725,403) disclosed a system for controlling the distribution and use of digital works having attached usage rights where the usage rights are defined by a usage rights grammar.
- b. Burns et al. (U.S. Patent Number 6,324,182) disclosed methods, which improve distribution of streaming continuous data from a content provider over a network to a subscriber's computer or other content rendering unit.
- c. Wiser et al. (U.S. Patent Number 6,385,596) disclosed a secure online music distribution system.
- d. Spagna et al. (U.S. Patent Number 6,587,837) disclosed a method for delivering electronic content from an online store.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam (Jenny) Phan whose telephone number is (703) 305-4665. The examiner can normally be reached on M-F 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Powell can be reached on 703-305-9703. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7239 for regular communications and (703) 746-7238 for After Final communications.

Art Unit: 2142

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

MARC THOMPSON

Marc Thompson
Patent Examiner
Art Unit 2142

703.308.6750

tp
August 6, 2003